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August 10, 2006

VIA ELECTRONIC FILING

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

RE: STB Finance Docket No. 34890
*Pyco Industries, Inc.— Feeder Line Application—Lines Of South Plains
Switching, Ltd. Co.*
Motion to Strike Letter of PYCO Industries, Inc., Filed August 8, 2006

Dear Secretary Williams:

I am filing herewith on behalf of Keokuk Junction Railway Co. (“KJRY”) a Motion to Strike Letter of PYCO Industries, Inc., Filed August 8, 2006. Copies of the Motion are being served on all parties of record in accordance with the Board’s regulations. If there are any questions about this matter, please contact me directly, either by telephone: (202) 663-7823 or by e-mail: wmullins@bakerandmiller.com.

Respectfully submitted,



William A. Mullins
Attorney for Keokuk Junction Railway Co.

Enclosures

cc: All Parties of Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. 34890

**PYCO INDUSTRIES, INC.— FEEDER LINE APPLICATION—
LINES OF SOUTH PLAINS SWITCHING, LTD. CO.**

MOTION TO STRIKE LETTER OF PYCO INDUSTRIES, INC., FILED AUGUST 8, 2006

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Attorneys for Keokuk Junction Railway Co.

DATED: August 10, 2006

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB DOCKET NO. 34890

**PYCO INDUSTRIES, INC.— FEEDER LINE APPLICATION—
LINES OF SOUTH PLAINS SWITCHING, LTD. CO.**

MOTION TO STRIKE LETTER OF PYCO INDUSTRIES, INC., FILED AUGUST 8, 2006

Keokuk Junction Railway Co. (“KJRY”) hereby moves the Surface Transportation Board (“STB” or “Board”) to strike the letter filed August 8 on behalf of PYCO Industries, Inc. (“PYCO’s Letter”). PYCO’s Letter is not authorized by the Board’s regulations or its orders in this case. Further, the content of the letter is redundant of PYCO’s August 2 submission to the Board and is immaterial inasmuch as it concerns “Alternative One” lines, which PYCO itself has declared are beyond the bounds of this proceeding. PYCO’s Letter should be stricken to reimpose an orderly process on this proceeding, as called for by the Board’s regulations and orders.

BACKGROUND

PYCO Industries, Inc. (“PYCO”) produces cottonseed oil and related products at two facilities located in Lubbock, TX. In 2005, PYCO’s rail traffic volume more than doubled from the prior year, due to a bumper cotton crop. PYCO began to experience disputes with the carrier serving its facility - South Plains Switching, Ltd. Co. (“SAW”) - leading PYCO to seek and obtain an alternative service order from the Board, allowing West Texas & Lubbock Railroad Company, Inc. (“WTL”) to institute service to PYCO over a portion of SAW’s lines during a portion of the day.

Disputes between PYCO and SAW continued, however, leading PYCO to file on May 5, 2006, a feeder line application. That application sought, in the alternative, to acquire either all of

SAW's lines (the "Alternative One lines") or just the lines that PYCO deemed necessary to serve itself and two neighboring shippers (the "Alternative Two lines"). However, PYCO failed to submit sufficient evidence of its financial responsibility or evidence that the majority of shippers on all of SAW's lines were inadequately served. Accordingly, the Board rejected PYCO's application. *See Pyco Industries, Inc.—Feeder Line Acquisition—South Plains Switching, Ltd. Co.*, STB Finance Docket No. 34844 (served June 2, 2006).

PYCO returned to the Board 12 days later with a new application. The new application consisted of additional information on PYCO's financial responsibility, plus a request to limit the scope of PYCO's application to just the Alternative Two lines. "Since the Revised Application is now complete as to Alternative Two, PYCO requests this Board to issue an immediate order to that effect, thus initiating the feeder line process at least as to Alternative Two." PYCO's "Revised" Application in STB Finance Docket No. 34890 at 10. PYCO labeled the application "revised," though it submitted the application with a new filing fee and new docket number, and incorporated by reference much of the information contained in the earlier application filed May 5. PYCO also separately appealed the Director of Proceedings' June 2 decision rejecting PYCO's original feeder line application for either the Alternative One or Alternative Two lines and sought to submit additional evidence in support of that earlier application.

In a combined decision issued July 3, the Board denied PYCO's appeal of the rejection of its original application, but accepted PYCO's new application:

PYCO has not met the standard for granting an appeal. . . . [Moreover,] we will not permit PYCO to amend the original application with this [additional] evidence, but we will permit PYCO to submit the additional evidence in a new application and will incorporate by reference the information in its original application. . . . PYCO's new application for Alternative Two is accepted. Notice will be published in the Federal Register on July 14, 2006.

STB Finance Docket No. 34890 (served July 3, 2006) at 4 and 8. Or, as stated by PYCO, “[T]he Board concluded [in the July 3 decision] that PYCO had made the requisite showing as to ‘Alternative Two’ . . . The Board thus accepted PYCO’s FLA for filing only as to Alternative Two.” PYCO reply to KJRY motion for extension, filed July 20, 2006, at 3.

The July 14 *Federal Register* notice set the deadline for submission of competing applications as July 18. On July 18, KJRY moved to extend the July 18 deadline for submission of competing applications to August 14, in accord with the Board’s regulations stating that competing applications will be due 30 days after publication of notice in the *Federal Register* accepting a feeder line application. 49 CFR §1151.2(b)(1) and (c)(1). KJRY stated that it intended, if granted the requested extension, to file a competing feeder line application for all of SAW’s lines.

PYCO objected, accusing KJRY of being aligned with SAW in seeking to extend the competing application deadline, and asserting that KJRY could not file a “competing” feeder line application for lines beyond those covered by PYCO’s application without reconsideration of the Board’s July 3 order, which reconsideration would unacceptably delay this proceeding. As stated by PYCO in its reply filed July 20 to KJRY’s extension,

In order for KJRY to have such [a competing] application [for all of SAW’s lines] accepted, KJRY must persuade this Board to reconsider its July 3 decision limiting this FLA proceeding to Alternative Two. Otherwise, KJRY’s motion for an extension is irrelevant or moot, because KJRY is not proposing to file an FLA competing for Alternative Two which is the only property at issue. . . . If this Board reconsidered its July 3 decision . . . then any FLA proceeding will not be completed by October 23, 2006, . . . PYCO thus must oppose any delay . . . KJRY is not seeking to file a competing application on Alternative Two;^[1] as already noted, KJRY seeks to file an FLA covering all the SAW system.

(See PYCO reply filed July 20 at 3, at 5, n. 5, and at 10.) Or, as stated by the Board,

¹ KJRY notes that its application to acquire all of SAW’s lines would have been a “competing application[] to acquire all . . . of the line sought in the initial application,” as competing applications are defined by the Board’s rules. See 49 CFR §1151.2(c)(1).

PYCO also argues that, in effect, KJRY seeks reconsideration of the Board's denial of PYCO's earlier appeal of the finding that PYCO's application for the All-SAW option was not complete. In that regard, PYCO contends that KJRY has not met the criteria for granting reconsideration.

On July 21, the Board granted in part KJRY's motion for extension, allowing KJRY until August 4, rather than until August 14, to file a competing application. Then, two days before KJRY's application was due, PYCO filed a request to expand the scope of this proceeding to include all of SAW's system - the Alternative One lines.

KJRY filed its competing application on August 4. Because of PYCO's July 20 challenge to whether an application for all of SAW's lines would be a proper competing application, and because KJRY did not have the full 30 days allowed under the Board's regulations to prepare the competing application, KJRY applied only to acquire the Alternative Two lines. KJRY also stated that it was attempting to obtain the remaining SAW lines outside of this proceeding, preferably through negotiation with SAW.

On August 8, PYCO's Letter was filed, partly in reply to KJRY's application and partly to again urge the Board to broaden this proceeding to encompass all of the Alternative One lines. KJRY hereby moves to strike PYCO's Letter.

ARGUMENT

PYCO's Letter is an unauthorized filing under the Board's regulations and its orders in this proceeding; furthermore, the letter is redundant and immaterial. Accordingly, it should be stricken. *See* 49 CFR §1104.8, and *Orange County Transportation Authority; Riverside County Transportation Commission; San Bernardino Associated Governments; San Diego Metropolitan Transit Development Board; North San Diego County Transit Development Board -- Acquisition Exemption -- The Atchison, Topeka And Santa Fe Railway Company*, 10 I.C.C. 2d 78; 1994 MCC LEXIS 31 at Finance Docket No. 32173 at *8 (striking a reply to a reply which was not permitted under the Board's regulations and which "merely revisits old arguments")

The Board's regulations governing feeder line proceedings call for the submission of an initial application, a competing application, comments on the initial and competing application(s) and replies to those comments. 49 CFR §1151.2(a - f). The Board's orders in this proceeding reflect that structure, calling for comments on KJRY's competing application by August 24 and replies by KJRY and PYCO to comments on their applications by September 7.

PYCO's Letter is none of these. The letter (1) reargues PYCO's August 2 request to broaden the scope of this proceeding to cover the Alternative One lines and to amend the Board's procedures to accommodate that change (including asking that KJRY not be allowed to file a competing application for the Alternative One lines), and (2) levies various criticisms against KJRY's competing application while stating that PYCO will respond to that application at a later time.

PYCO's request to expand the scope of this proceeding to include the Alternative One lines is both redundant of its August 2 filing and immaterial to the Alternative Two lines at issue, and should therefore be stricken. As PYCO itself said less than three weeks ago, "Alternative Two which is the only property at issue." Moreover, as the Board said, "We will not permit PYCO to amend the original application with this [additional] evidence, but we will permit PYCO to submit the additional evidence in a new application and will incorporate by reference the information in its original application. . . . PYCO's new application for Alternative Two is accepted." Thus, the portions of PYCO's Letter that repeat its request to expand the scope of this proceeding and that ask for various procedural rulings in relation thereto are repetitive of PYCO's August 2 filing herein and are immaterial because the Alternative Two lines are the only ones at issue, as PYCO itself recently argued vociferously.

PYCO is, in effect, asking the Board to reconsider its rejection of PYCO's appeal of the Director's Order and/or asking the Director to reconsider his rejection of the Alternative One -- all

SAW alternative. Yet, PYCO makes no effort to comply with the requirements of 49 CFR §1115.2, §1115.3, §1115.4 or 49 U.S.C. §722(c). If PYCO believes that the new shipper letters constitute “new evidence” or “changed circumstances” so as justify reconsideration and reversal of the prior orders, let them file such a petition for reconsideration or reopening and let parties comment accordingly. It would be a violation of the Board’s regulations and of KJRY’s and other interested parties’ procedural and due process rights to change the rules in the middle of this proceeding without the filing of an appropriate petition and appropriate opportunity for response. *See SWKR Operating Co.--Abandonment Exemption--In Cochise County, AZ, In The Matter Of A Request To Set Terms And Conditions*, STB Docket No. AB-441 (Sub-No. 2X), 1997 STB LEXIS 286 (served Nov. 12, 1997) at *4-*5 (striking untimely evidence which was not proper response in the procedural posture of the case).

There is another alternative as suggested by the Board’s July 3rd decision. If PYCO desires to no longer proceed with its Alternative Two feeder line application and instead proceed with an all-SAW alternative, PYCO can dismiss the existing proceeding and submit the additional shipper letters as part of a new feeder line application, incorporate by reference the information in its original application or resubmit it, pay a new filing fee, and otherwise meet the requirements for filing an all-SAW alternative feeder line under 49 CFR Part 1151. The appropriate procedural regulations and processes can then be followed. This is the appropriate way for the Board to preserve all parties’ rights. Indeed, besides KJRY’s procedural rights, there may be other parties who may be interested in filing a competing feeder line application for all of SAW’s lines and whose due process rights would thus otherwise be compromised by a Board decision hastily reversing course in the middle of a proceeding on Alternative Two by switching to Alternative One.

The portions of PYCO’s Letter that constitute a reply to KJRY’s competing application are likewise redundant and immaterial and should be stricken. While PYCO levels various criticisms

against KJRY's application, it likewise says, "PYCO reserves the right to comment further but no later than August 14 on the application which KJRY has filed." Thus, PYCO's attacks on KJRY's application in PYCO's Letter are repetitive of anything that PYCO may choose to say in the future about KJRY's application, making those attacks redundant. The Board's procedural order served August 3 does not call for multiple replies by PYCO to KJRY's application. Therefore, inasmuch as PYCO's Letter states that it does not constitute PYCO's reply to KJRY's application, the letter violates the Board's procedural schedule in this proceeding as well as the Board's general regulations specifying permissible pleadings in feeder line proceedings. The filing is therefore contrary to the Board's regulations and orders, as well as being redundant and immaterial. It should be stricken. *See St. Louis Southwestern Railway Company -- Abandonment -- In Smith And Cherokee Counties, TX*, Docket No. AB-39 (Sub-No. 12), 1992 ICC LEXIS 65 (March 23, 1992) at *3 (striking a reply to a reply which was redundant, raising no new issues).

KJRY respectfully suggests that the Board should also strike PYCO's Letter and invite the filing of a new feeder line application for the all-SAW alternative or the filing of an appropriate reconsideration petition to try to reimpose an orderly process in this case. *See CSX Transportation, Inc.-Discontinuance-At Memphis, In Shelby County, TN*, STB Docket No. AB-55 (Sub-No. 618), 2002 STB LEXIS 646 (served Oct. 28, 2002) at *2 (striking applicant's late-filed evidence and admonishing the applicant against "introduc[ing] important cost evidence at the eleventh hour"). Thus far, PYCO has attempted to use the projected expiration date of the current alternative service order as a lever to force the Board to reach a rushed conclusion on PYCO's application and to swat aside any competition to PYCO's application. This scare tactic should be rejected. The Board should not be unnecessarily concerned about the expiration of the alternative service order granted to PYCO. Given SAW's new found willingness to not oppose the merits of an all-SAW feeder line application and the prior actions by the Board, there is no evidence to suggest that SAW will punish

its shippers by retaliating against them in the middle of the cotton shipping season if SAW returns to full operation of its lines, especially given that there would be pending proceedings in front of the Board at that time. Furthermore, if the emergency continues to exist, parties, including PYCO, KJRY, or WTL, would be free to seek another alternative service order request or, perhaps, to seek an exemption pursuant to 49 U.S.C. §10502 from the deadline established in 49 U.S.C. §11123(c)(1), due to the unusual circumstances of this case. Similarly, SAW may consent to a voluntary directed service order over its lines. There are numerous avenues available to ensure that the expiration of the existing service order does not result in additional harm to shippers and PYCO's scare tactics should not be used to justify violations of the Board's regulations and the parties' due process rights.

In short, the flurry of letters, requests to change the scope of the proceeding, and other similar filings needs to stop. It is making an orderly process in this proceeding unattainable. Indeed, if the Board accepts PYCO's request to convert this proceeding in midstream to an all-SAW alternative and requires the filing of competing feeder line applications for such an all-SAW alternative by August 18, it will simply be impossible for KJRY to file such a competing application. While PYCO would obviously desire such a result, that is not consistent with the public interest, the regulations, or the statute. The Board simply needs to impose order by enforcing its regulations. Indeed, as the Board recognizes, it is not only PYCO's interests that are affected by this proceeding, but also those of the 20+ other shippers on SAW's lines, the connecting carrier (BNSF) and of other parties to this proceeding.

CONCLUSION

PYCO's Letter violates the Board's regulations governing permissible filings in feeder line proceedings. It also violates the Board's procedural orders issued July 3 and August 3. Moreover, to the extent that it addresses Alternative One lines, it is both redundant and immaterial, according

to the standards PYCO itself earlier articulated on the limits of this proceeding. Accordingly,
PYCO's Letter should be stricken from the record herein.

Respectfully submitted,



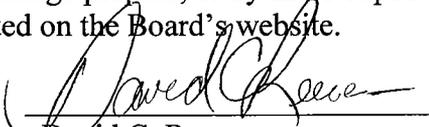
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Attorneys for Keokuk Junction Railway Co.

August 10, 2006

CERTIFICATE OF SERVICE

I, David C. Reeves, hereby certify that on August 10, 2006, I caused a copy of the foregoing Motion to Strike to be served by first class mail, postage prepaid, or by more expeditious service upon all parties of record to this proceeding reflected on the Board's website.



David C. Reeves